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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of Section 11(c))
of the Cable Television Consumer)
Protection and Competition Act) MM Docket No. 92-264
of 1992)
)
Horizontal Ownership Limits)

To: The Commission

COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T"), by its attorneys, hereby files its Comments on the Further Notice of Proposed Rulemaking issued by the Federal Communications Commission ("FCC" or "Commission") regarding the imposition of horizontal ownership limits for multiple system owners of cable television systems ("MSOs").[1]

I. Summary of AT&T's Interest and Comments In The Proceeding.

AT&T is the largest provider of long-distance, international and wireless mobile telephone services in the United States, offering telecommunications services to

[1] Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal Ownership Limits, MM Docket No. 92-264, Memorandum Opinion and Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 98-138, released June 26, 1998 ("Further NPRM").

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residential, business, and government customers operating in more than 250 countries and territories around the world. In addition, AT&T has spent billions of dollars in an effort to become a provider of competitive local exchange telecommunications services to customers in the United States.[2]

Yet, notwithstanding its significant investments, assets, and telecommunications experience, AT&T has had great difficulty initiating a residential local exchange telephone service that can be competitive with the service provided by incumbent local exchange carriers ("ILECs").[3] The ILECS have maintained their entrenched position as the dominant providers of local exchange and exchange access service since the adoption of the Telecommunications Act of 1996 (the "Telecom Act") through their control of their bottleneck local exchange facilities that are connected to each and every home and business. Despite the framework envisioned by Congress in the Telecom Act, local exchange competition has been stifled by the on-going litigation

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[2] Among these investments, in an offering known as AT&T Digital Link, AT&T is modifying its toll network to permit the provision of local exchange services to business customers with sufficient demand to connect their premises directly to AT&T's network. Additionally, on July 23, 1998, pursuant to prior Commission consent, AT&T acquired Teleport Communications Group, Inc. ("Teleport"). Teleport is the nation's largest competitive local exchange carrier ("CLEC"), providing service primarily to business customers in 83 metropolitan areas in the United States.

[3] Currently AT&T has very limited residential local exchange operations which provide service on a resale basis to approximately 350,000 residential customers in eight states, including Alaska, California, Connecticut, Georgia, Illinois, Michigan, New York and Texas.

concerning the rules governing access and interconnection to the ILEC's facilities and the failure of ILECs otherwise to comply with the Telecom Act's requirements.

Nonetheless, as part of its persistent effort to become a competitive provider of telephone exchange services to residential customers, AT&T recently announced that it will merge with Tele-Communications Inc. ("TCI"), one of the largest providers of cable television service throughout the United States. Directly or through subsidiaries controlled by it, TCI provides cable television service to approximately 12.5 million customers.[4] In the markets where it provides cable television service, TCI has developed an extensive infrastructure of wires and amplifying transmission systems that directly connect to residential consumers' homes. AT&T plans to upgrade this network and infrastructure to enable it to provide two-way telephony and advanced data services. TCI's network to residential homes therefore will serve as the basis for a local exchange loop that, in certain locations, has the potential to be competitive with the facilities-based service provided for decades by the ILECs.[5]

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[4] TCI's largest cable markets include San Francisco, Seattle, Chicago, Denver, Pittsburgh, Portland (Oregon), St. Louis, Salt Lake City, Grand Rapids, and Des Moines. Affiliates of TCI that are not controlled by TCI also provide cable television service to millions of additional customers in other markets throughout the United States.

[5] At the time TCI merges with AT&T, the assets of AT&T and TCI will be divided into two business groups: the Liberty Group and the Common Stock Group. The Liberty Group will operate the video (continued...)

Numerous other parties, including TCI, can demonstrate that developments in the video delivery and programming marketplace have greatly reduced the basis for adopting restrictive limits on MSO ownership of cable systems. AT&T is filing these comments to urge the Commission, in considering the imposition of cable horizontal ownership limits, also to take account of the broader competitive interests such limits might impair, including efforts of AT&T, TCI and others to convert cable television networks into facilities capable of providing telephony services. As explained below, these developments reflect factors that Congress has directed the Commission to consider in adopting cable ownership limits, and will further Congress's fundamental goal in the Telecom Act -- the introduction of exchange and exchange access competition. At bottom, the Commission should avoid restrictive cable horizontal ownership limitations, and ensure that such limits do not unnecessarily or inadvertently retard the introduction of facilities-based local exchange and exchange access competition using existing cable infrastructure.

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[5] (...continued)
content and programming businesses presently operated by the Liberty Media Group and its related businesses. The Common Stock Group will operate a separate company called "AT&T Consumer Services Company," which will include, among other things, AT&T's current consumer long-distance, wireless, and Internet service units, as well as TCI's cable and high-speed Internet businesses. On a day-to-day basis, the Liberty Group will be operated independently by its current management.

II. DISCUSSION

Congress directed the FCC to consider establishing horizontal ownership restrictions for primarily one purpose: to promote the ability of video content providers to obtain access to a sufficient segment of the public to make program production economically viable.[6] Among the factors that Congress directed the FCC to consider in adopting such limits were two important concerns:

1. any efficiencies and other benefits that can be gained through increased ownership or control of cable television systems; and

2. the dynamic nature of the communications marketplace.[7]

Since passing the Cable Television and Consumer Protection Act of 1992, Congress has spoken again on the importance of competition in the communications industry. In the Telecom Act, Congress placed prime importance on the development of competitive local exchange services, with the hope that the FCC would develop policies that would foster the competitive provision of voice,

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[6] See 47 U.S.C. § 533(f); see also S. Rep. No. 102-92, at 34 (1991).

[7] 47 U.S.C. § 533(f)(2)(D)-(E).

data, and video services, including facilities-based competition by at least two "wires" into the home.[8]

As discussed above, AT&T has developed a strategy for providing competitive, facilities-based local exchange services by, among other things, upgrading and enhancing cable television networks. The development of such a business plan for creating facilities-based competition was contemplated by Congress in its enactment of the Telecom Act, and by the Commission in implementing the Telecom Act. As the Conference Report recognized, "[s]ome of the initial forays of cable companies into the field of local telephony . . . hold the promise of providing the sort of local residential competition that has consistently been contemplated." H.R. Conf. Rep. No. 104-458, at 148. The conferees thus anticipated "that cable companies will be providing local telephone service and the BOCs will be providing cable service." Id. at 201. From the very start, Congress recognized that competitive local exchange carriers using cable system infrastructure would need to operate on a scale that allowed them to compete with the ILECs.[9] In considering the issues raised in the Further Notice, the Commission should remain mindful of Congress's intention -- and expectation that -- cable

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[8] See H.R. Conf. Rep. No. 104-458, at 148, 201 (1996).

[9] H.R. Rep. No. 104-204, at 107 (1995); S. Rep. No. 104-230, at 6 (1995).

companies would compete with ILECs in the provision of local exchange service.

In its orders implementing the Telecom Act, the Commission similarly has recognized the potential for cable facilities to be used to compete with the ILECs.[10] The Commission even has viewed this potential competition from cable companies as a factor in favor of permitting the merger of ILECs that operate in adjacent areas and do not currently compete.[11] The Commission should not now unnecessarily restrict the potential for such competition by limiting the structural business affiliations and service areas of potential competitive local exchange carriers ("CLECs") in a manner that would frustrate competition with the ILECs, which are themselves expanding their own geographic coverage areas unencumbered by regulations setting horizontal ownership limits.

Like other facilities-based local exchange carriers, cable-based CLECs should be able to pursue any economies from the

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[10] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15449, 16249 (1996) (Separate Statement of Commissioner Chong) ("Some new entrants have some network infrastructure in place, and lack only a few critical components in order to provide local exchange service to consumers. For example, today's cable operators have a coaxial wire that passes over 96.6% of the TV households in America.").

[11] See, e.g., Bell Atlantic/NYNEX Corp., 12 FCC Rcd. 19985, 20031 (1997) ("Incumbent cable television providers ("Multiple System Operators" or "MSOs") have facilities . . . that are capable of being upgraded to provide local exchange and local exchange access services to residential and business customers.").

consolidation of facilities and corporate affiliations. As Congress understood, "the scale and scope of economies achievable through cable system clustering will generate lower costs . . . and will enable the cable industry's ability to enter and compete in the local telephone business."[12] Whatever the precise nature and measure of such efficiencies, regulation that indiscriminately precludes their attainment necessarily reduces consumer benefits and inhibits competition in the provision of exchange and exchange access services. To avoid these harms, the Commission should provide cable telephony service providers with the widest possible latitude to follow the dictates of the marketplace and pursue consolidations and network expansion as efficiencies warrant.

At a minimum, it would be completely illogical and counter-productive if AT&T and other carriers providing local exchange services over cable networks were not able to expand their service areas and affiliations to the same extent as the ILECs, or to an even greater extent. Presently, there are no specific FCC regulations that impose a horizontal ownership limit on ILECs. Moreover, the footprints of the dominant ILECs are already so significant that the proposed restriction on horizontal ownership for multi-system cable television operators would impede the ability of individual CLECs to match this reach using cable facilities. For example, Bell Atlantic already

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[12] H.R. Rep. No. 104-204, at 107.

controls approximately 45 million of the total access lines in the United States, and SBC Communications already controls approximately 41 million of the total access lines in the United States.[13] Even considering only residential access lines, Bell Atlantic already controls more than 25 million switched access lines, while SBC Communications controls almost 21 million switched access lines.[14]

Moreover, the footprints of the dominant ILECs are seemingly expanding through acquisitions. If, as presently proposed, SBC Communications merges with Southern New England Telephone and Ameritech, its total access lines in the United States will approach 67 million, of which more than 35 million are residential. Similarly, if, as presently proposed, Bell Atlantic merges with GTE Incorporated, that company's total access lines will approach 65 million, of which almost 38 million are residential.[15]

In order to promote local exchange competition, the Commission should adopt rules that would permit cable-based local exchange entrants to reach sizes as large, or larger, than the ILECs. First, cable-based CLECs will be forced to begin with

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[13] See Preliminary Statistics of Communications Common Carriers, 1997 Edition, Table 2.10.

[14] Id.

[15] See Preliminary Statistics of Communications Common Carriers, 1997 Edition, Table 2.10.

facilities that have been constructed in diverse regions throughout the country. As disclosed above, for example, TCI's largest cable operations are based in metropolitan areas located in the Northeast, Midwest, Southeast, Rocky Mountain, and Northwest Regions on the United States. These cable service areas are nowhere near as extensive as the regional service areas of the largest ILECs with whom AT&T will compete for local exchange customers. Nevertheless, when the FCC imposes its cable horizontal ownership limits, all of these smaller regional cable operations may be counted toward the limit, and AT&T could be required to undergo extensive transactional costs and analysis to consolidate the operations of AT&T and TCI, to use alternative methods to obtain access to residential homes, or to operate with smaller geographic footprints than competing ILECs. From a competitive perspective, the Commission would be well served to minimize the magnitude of its ownership limits and allow cable system owners to develop and consolidate large regional footprints.

Second, in order to compete effectively with the ILECs, new entrants may need to establish a geographic footprint that is larger than those established by the regional ILECs. This is because, as new entrants build out their local exchange networks, they will have fewer two-way telephone customers to support their systems and the operation of their local exchange service. In order to obtain a sufficient amount of local exchange customers to achieve the necessary economies, a new competitor may need to cover more territory than an ILEC because the CLEC's penetration level, especially during the initial period of construction and operation, will be much less than its established competitor.

Indeed, on average, ILECs provide service to about 94 percent of all households.[16] ILECs thus have spread the costs of developing their local wired networks over an extremely high share of the homes in their geographic service area. By contrast, cable television systems have an average penetration rate of approximately 68%, even when they pass approximately 98% of the home in the nation.[17] In the face of competition from the ILECs, cable-based telephony penetration rates will not reach even this level.

To justify the large expense of upgrading existing facilities or constructing new facilities to compete with ILECs' existing networks, the potential customer base for a competitive carrier therefore must be substantial. The Commission should refrain from adopting a horizontal ownership limit that could eliminate the opportunity for such a potential customer base. Consistent with Congress' direction in the 1992 legislation

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[16] Preliminary Statistics of Communications Common Carriers, 1997 Edition, Table 1.7.

[17] See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Fourth Annual Report, 13 FCC Rcd. 1034, 1174, (1998), ("Video Programming Fourth Annual Report").

resulting in this proceeding, see supra at 5, the Commission should recognize that the development of new services, especially competitive local exchange services, is in the public interest, and that the efficiencies accompanying large geographic coverage areas and broader structural business affiliations could foster such competition. The prospects and benefits of such competition militate strongly against imposition of any horizontal ownership limitations that could potentially impede the use of existing cable infrastructure to erode the local exchange bottlenecks of the ILECs.

CONCLUSION

In considering cable horizontal ownership limits, the Commission should take account of recent efforts to convert cable television infrastructure into facilities capable of providing telephony services, and ensure that any horizontal ownership limits do not retard the introduction of facilities-based local exchange and exchange access competition using existing cable networks.

Respectfully submitted,

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